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09/382,907	08/25/1999	TIMOTHY M. KEISER	10269/11	5840

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BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP
900 THIRD AVENUE
NEW YORK, NY 10022

EXAMINER

ROBINSON BOYCE, AKIBA K

ART UNIT	PAPER NUMBER
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3623

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/382,907
Filing Date: August 25, 1999
Appellant(s): KEISER ET AL.

MAILED

02/20/04

GROUP 3600

Joel Weiss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/29/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1, 3-9 and 11-14 all stand or fall together.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

3,581,072	Nymeyer	3-1968
5,819,238	Fernholz	10-1998

5,826,241

Stein et al

10-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 8, 9, 11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nymeyer (US Patent 3,581,072), and further in view of Fernholz (5,819,238).

As per claims 1, 9, 14, Nymeyer discloses:

Measuring an imbalance between the buy orders and sell orders for the instrument received over a given period/means for measuring an imbalance between the buy orders and sell orders for the instrument received over a given period, (Col. 7, lines 64-74);

Computing a projected price movement based on the measured imbalance between the number of buy and sell orders/means for computing a projected price movement based on the measured imbalance between the number of buy and sell orders, (Col. 7, lines 71-74);

Setting a market price for the instrument based upon the received buy and sell orders and the measured imbalance/means for setting a market price for the instrument

based upon the received buy and sell orders and the measured imbalance, (Abstract, lines 1-3);

Automatically generating additional buy orders for the instrument at the market price to guarantee execution of some or all of the received buy or sell orders/means for automatically generating additional buy orders for the instrument at the market price to guarantee execution of some or all of the received buy or sell orders, (Col. 11, line 68-Col. 12, line 3).

Nymeyer fails to disclose the following, however Fernholz discloses:

Generating an electronic currency to execute the buy and sell orders/means for generating an electronic currency to execute the buy and sell orders (Col. 12, lines 16-17, here Fernholz discloses the custodial bank holds electronic cash which is distributed for trade purposes).

[Crediting a first trader's account with proceeds/debiting a second trader's account] in the electronic currency for the executed sell/buy orders by the first/second trader/means for [crediting a first trader's account with proceeds/debiting a second trader's account] in the electronic currency for the executed sell/buy orders by the first/second trader (Col. 12, lines 50-55).

It would have been obvious to one of ordinary skill in the art to generate electronic currency and to credit or debit the traders' accounts with electronic currency for executed buy/sell orders with the motivation of initiating and finalizing the trade.

As per claims 3, 11, Nymeyer discloses:

Further comprising exchanging the Hollywood dollars in the first or second trader's account for desired currency/further comprising means for exchanging the Hollywood dollars in the first or second trader's account for desired currency, (Col. 1, lines 12-29, wherein claim limitation is merely describing a trade).

As per claims 8, 13, Nymeyer discloses:

Wherein the additional buy orders or sell orders for the instrument are automatically generated at the market price if the projected price movement is greater than or equals a predetermined price movement threshold, (Col. 7, lines 44-61).

3. Claims 4-7, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nymeyer (US Patent 3,581,072), and further in view of Fernholz (5,819,238), and further in view of Stein, et al (US Patent 5,826,241).

As per claims 4-7, 12, neither Nymeyer nor Fernholz disclose the following, however Stein, et al discloses:

Wherein the electronic currency are exchanged at a currency exchange web site, and wherein a request for the exchange is transmitted to the currency exchange web site via a secured communication/further comprising purchasing goods or services using the electronic currency in the first or second trader's account, the goods or services being offered for sale by an on-line vendor via a web site on the Internet/wherein a request for the purchase is transmitted to the vendor's web site via a secured communication/wherein the vendor debits the first or second trader's account in the electronic currency for the purchase of goods or services via a secured communication/means for purchasing goods or services using the electronic currency in

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the first or second trader's account, the goods or services being offered for sale by an on-line vendor via a web site on the Internet, (Col. 9, lines 49-54).

It would have been obvious to one of ordinary skill in the art to request an exchange, to purchase goods, to request a purchase, and to debit accounts through a website on the Internet via secure communications with the motivation of executing financial transactions on the Internet using the most common tools in Internet technology, thereby making the most logical, safest purchases with low risk factors. Stein doesn't specifically state that the exchange is done on a web site, however he does disclose that the exchange is done on the Internet making the implementation through a web site obvious.

(11) *Response to Argument*

As per claim 1, appellant argues that Nymeyer fails to disclose the "automatically generating additional buy orders or sell orders for the instrument at the market price to guarantee execution of some or all of the received buy or sell orders" step, and argues that Nymeyer is merely setting an appropriate price for "at market" orders that have already been entered since the Abstract of Nymeyer discloses that "Unpriced or 'at market' orders are assigned prices based upon the market price...". However, Nymeyer discloses this step specifically in Col. 11, line 68-Col. 12, line 3. Here, Nymeyer discloses that "at market" orders are determined by adding on a minimum price increment to the closing price for buy orders and reducing the closing price by one minimum increment for sell orders. In this case, the increment/reduction to the closing price for buy and sell orders represent the additional buy orders and sell orders since

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this increment/reduction would change the value of the buy/sell order for a particular closing price. "At market" orders are assigned based upon the market price, but are not assigned the market price. Since the minimum price increment is incorporated when determining "at market" orders, these new prices generated represent the additional buy/sell orders.

In addition, appellant argues that Fernholz does not make up the deficiency of Nymeyer. As per claim 1, the Fernholz reference was incorporated to make up the following deficiency of the Nymeyer reference: "generating electronic currency". However, this limitation is taught by Fernholz in Col. 12, lines 15-16 where the custodial bank is introduced. Fernholz shows that the custodial bank holds cash in electronic form. Then, lines 23-25 disclose that the custodial bank updates cash balance in each portfolio. In this case, updating the cash balance in electronic form represents the generation of electronic currency in each portfolio. As per claim 1, the last 3 steps disclose "generating an electronic currency to execute the buy and sell orders", "crediting a first trader's account with proceeds in the electronic currency for the executed sell orders by the first trader", and "debiting a second trader's account in the electronic currency for the executed buy orders by the second trader". These steps merely represent electronic funds transfer. In this case, funds are being transferred from one account to another, which is the same as generating electronic currency. Therefore, Fernholz discloses the generation of electronic currency.

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Appellant also argues that Stein does not make up the deficiency of Nymeyer. The Stein reference was not used to reject claim 1, and is therefore irrelevant to the argument of claim 1.


For the reasons stated above, claim 1 is still rejected under 35 U.S.C. 103(a) as being unpatentable over Nymeyer (US Patent 3,581,072), and further in view of Fernholz (5,819,238). Since claims 3-9, and 11-14 all stand or fall together with claim 1, claims 3-9 and 11-14 are still rejected for the same reasons as claim 1.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


A. R. B.
June 15, 2004

Conferees
Akiba Robinson-Boyce



Tariq Hafiz

John Weiss



TARIQ R. HAFIZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP
900 THIRD AVENUE
NEW YORK, NY 10022